

215: 561-7463

570 N. 23rd St., Apt. 1-A
Philadelphia, Pa. 19130
July 5, 1971

Dr. Daniel Ellsberg
10 Hilliard St.
Cambridge, Mass.

Re: your defense strategy, and legal challenge
to the war.

Dear Dr. Ellsberg:

Many thanks! I believe you have provided the catalyst that will end the war this year!

For a brief introduction: I am an economist by profession, was in JFK's class at Harvard, Associate Producer (and initiator) of the historical documentary film on Vietnam "In the Year of the Pig", helped edit the May 1958 Report of the Lawyers Committee on American Policy Towards Vietnam (which proposed a national clearing house for information on legal challenges to the Vietnam War), and a long-time member of the National Council of the NECLC (reference: Leonard Boudin), father of two draft resisters.

As Leonard Boudin may have told you, NECLC is preparing a series of lawsuits challenging the legality of the war. If properly framed, these suits could provide a very useful complement to your own defense case, depending on the type of defense you are preparing.

As you may soon discover if you haven't already, there is an institutionalized potential conflict between defense lawyers and defendants who conscientiously challenge the government: lawyers are trained to win lawsuits by the best means possible. But the surest way to win a lawsuit is not always the way that brings out most clearly the moral and political basis on which the defendant is challenging the government.

As I have pointed out in the enclosed papers (written in early 1967!), I believe that the basic cause of the Vietnam war -- and most other wars since 1945 -- has been the scofflaw attitude of the U.S. towards the basic principles of the United Nations Charter and the other international law which was codified after 1945 for the specific purpose of making possible continued world peace. Thus, in order to prevent future Vietnams and help establish a return of the U.S. to genuine respect for international law, I believe it would be most useful for all lawsuits challenging the legality of the war to focus on these basic issues.

Unfortunately, the NECLC suits so far focus almost entirely on the non-declaration of war by Congress and the atrocities (war crimes), but make no specific mention of the U.N. Charter or crimes against the Peace. I believe that judicial invocation of these more basic laws, not only in the NECLC suits but in defensive suits like your own, would help to educate the public as to the most basic causes of the war and help to destroy the very roots of the cold war. The Pentagon Papers have laid the historical groundwork for such a challenge.

I would appreciate your consideration of, and reaction to, the following:

1) I am now trying to persuade Victor Rabinowitz (Leonard's partner) to broaden the argument of the NECLC suits as discussed above (see enclosed "Proposals..."). If you agree with this, and feel that it would (a) help to end the war and prevent future wars like this, and/or (b) help increase public support of and understanding of both your case and the NECLC cases, I would appreciate it if you would express your opinion to Leonard, and discuss this with Noam Chomsky, John Kerry and

others likely to be interested.

(2) As mentioned in "Proposals..." p. 3 (5), NECLC is not organized to take responsibility for ^{the} major organizational and public relations job needed to derive the maximum effect from the lawsuits. It has seemed to me that, considering the fact that the problem of America's attitude towards the U.N. and international law (and the cold war) will extend far beyond the Vietnam war, it would be useful to set up an entirely new ad hoc organization to do the necessary job for the current lawsuits, and then carry on beyond to do the kind of job that the present UN Assn and world law groups have not done. Do you agree with this, and, if so, would you be willing to help set up such and organization?

(3) I have been wondering if it would be useful to introduce in Congress a resolution to the effect that the Administration may not send any U.S. servicemen overseas for combat duty, or advisory or supporting duty in an area where combat is likely, with ^{out} getting a prior advisory opinion from the Supreme Court as to the legality of that application of "force or threat of force" under the U.N. Charter and other international laws and treaties. I should think that at the very least such a resolution would tend to focus attention on the legality issue, and would tend to put the Supreme Court more on the spot on this issue. And it is remotely possible that such a resolution might pass! I would value your opinion on this.

(4) It seems to me that one of the key values right now in pressing the "self-determination" provisions of the U.N. Charter is that this is one of the main points in the new NLF peace proposal. And since the Administration claims that "self determination" is also the primary aim of U.S. policy, focusing public attention on the meaning and implications of the term would help to clarify the issues in the public mind. Would you agree?

(5) If I read the new peace offer correctly, one of its main demands is merely that the U.S. "step aside" and keep hands off (as it claims to have done when Diem was overthrown) during the next few months, so that the various political factions in Saigon can take care of Thieu before the elections. (I was most interested in the fact that they did not include Ky in the list of those they couldn't deal with!) If you have the same impression, wouldn't it be useful to see that all the main peace groups and peace congressmen make this a major objective immediately?

(6) At the risk of overtaking your acceptance of additional reading material, I am enclosing a "Proposal for an AFSC program to promote expansion of the economic functions of the UN as an alternative to 'American Imperialism'" This has long been a "dream" of mine (I gave a paper on this at a Law Day panel at the Univ. of Pittsburgh Law School about 10 years ago). The AFSC does not seem to be interested. Is this something that people at the Center for Intl. Studies might be interested in exploring?

Good luck!

Sincerely,

Jack Atlee
John S. Atlee

P.S. I am in process of setting up an independent economic research center to publish chart books and analyses which will make the economy understandable to laymen, and expect to be visiting Cambridge in the next few weeks. I'd enjoy further discussions on some of these matters, if you'd like.